

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.8491 OF 2006

Ram Mohan Anandrao Karpe
& Ors. Petitioners
Vs.
Smt. Sunanda w/o Ramakant
Desai & Ors. Respondents

Shri A.S. Karwande for the Petitioners.

Shri A.A. Kocharekar for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 22, 2006

P.C:

1. Heard. The petitioners challenge the order dated 14-11-2006 passed by the Appellate Bench of the Small Causes Court below Exhibit-5 in Appeal No.261 of 2006 arising from the decree passed in R.A.E. & R. Suit No.856/1429 of 2002. By the impugned order, the Appellate Bench has directed the deposit of Rs.15,000/- per month as compensation during the pendency of the appeal with liberty to the respondents to withdraw the amount so deposited, without prejudice to the rights of the parties. The grievance of the petitioners is that in relation to another premises in the same building, while dealing with the appeal arising in relation to the said premises, under the order dated 8-3-2006, only an amount of Rs.106/- per month was directed to be deposited. Considering the same, there was no

justification for the Appellate Bench to direct the deposit of Rs.15,000/- per month in relation to the suit premises. Undisputedly, in the case in hand, the respondents/landlords had placed on record sufficient materials, including the valuation report of the architect revealing the running rate of rent in the locality in relation to the premises similar to the suit premises. Undisputedly, no material was placed on record on behalf of the petitioners to counter the said evidence produced by the landlords in support of the claim for a sum of rupees sixteen thousand and odd made by the landlords as compensation for the suit premises per month. Taking into consideration the materials on record and while deciding the Exhibit-5 i.e., the application for stay of the eviction order passed against the petitioners, the lower Appellate Bench has directed the petitioners to deposit a sum of Rs.15,000/- per month as monthly compensation. As the impugned order has been passed taking into consideration the entire materials on record placed by the parties and as the petitioners have not placed any material on record to counter the materials placed by the landlords in support of their claim for monthly compensation to the tune of rupees sixteen thousand and odd per month, the Appellate Bench having granted only Rs.15,000/- per month, no fault can be found with the impugned order.

2. It was sought to be contended on behalf of the petitioners that the petitioners had even denied the title of the respondents. Undisputedly, in the impugned order it has been observed that prima facie there is no case in relation to the point sought to be raised regarding the denial of title as the pleadings do not disclose any such plea. It is not necessary to go into the said issue at this stage. The appeal is still pending before the lower Appellate Bench and the lower Appellate Bench will have to consider the same while dealing with the appeal. That, however, will not entitle the petitioners to deny the payment of compensation for occupation of the premises during the pendency of the appeal. Viewed from this angle and considering the fact that the lower Appellate Bench has passed the impugned interim order on the basis of assessment of the materials on record, and as it does not disclose any finding contrary to the materials on record nor any finding can be said to be perverse, it does not disclose any jurisdictional error and as such does not warrant interference in writ jurisdiction under Article 227 of the Constitution of India. The petition, therefore, fails and is rejected. However, at the request of the learned Advocate for the petitioners, time to deposit the arrears is extended till 15-1-2007.

(R.M.S. Khandeparkar, J.)

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